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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,) No. CR-07-0473-PJH
Plaintiff,)
Vs.) DEFENDANT DONALD'S CLYBURN'S
DONALD CLYBURN,) FIRST STATUS MEMORANDUM
Defendant.) Honorable Phyllis J. Hamilton
) November 7, 2007 @ 2:30 p.m.
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Defendant Donald Clyburn, by and through his attorney, Steven F. Gruel, hereby submits this First Status Memorandum for the November 7, 2007 hearing scheduled before the Court.

I. FIRST STATUS MEMORANDUM

A. Nature and Procedural History of the Case

Mr. Clyburn is alleged to have possessed child pornography between January 6, 2005 to about April 7, 2005. Two years later, on July 20, 2007, the United States Attorney indicted Donald Clyburn with a single count of possession of child pornography. The case is before the Court for motion and trial setting.

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2. Speedy Trial

3 On November 7, 2007, the Speedy Trial date is calculated to be January 16, 2008.

4 3. Anticipated Defense Motions

5 The defense anticipates filing at least one discovery motion pursuant to Brady v. Maryland,
6 373 U.S. 83 (1963). The following facts of this case warrant a discovery motion seeking
7 government disclosure of information that goes to either Mr. Clyburn's guilt or punishment in
8 this case.

9 Specifically, Mr. Clyburn was a San Francisco Police Officer who left the force because of a
10 knee injury and disability in 1999. He served as a police officer from 1977 to 1999. He served
11 with honor and was a member of the San Francisco SWAT response team. Prior to joining the
12 police force, Mr. Clyburn was served in the United States military and in Viet Nam.

13 Mr. Clyburn has no criminal history. There are no claims, and nor can there be, that he ever
14 abused or ever attempted to abuse any children. He does not have access to children in any
15 authoritative role like a coach, instructor or adult leader. Mr. Clyburn has not reached out for
16 children on the internet or in any other way. He has not produced any images of child
17 pornography, distributed or commercially gained from any child pornography.

18 The indictment charges Mr. Clyburn with one count of possession of child pornography and,
19 according to the discovery, this amounted to 113 video images – which he allegedly saved only 8
20 images. The other 105 video images were deleted from his computer. As stated above, the
21 alleged simple possession was in January to April of 2005 and the government's indictment was
22 brought *over two years later* and in filed in July 2007. While the government's search warrant
23 was executed on December 7, 2006 and his computer was seized., there is nothing to indicate
24 that Mr. Clyburn continued with any child pornography in any manner since the federal search.
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1 Mr. Clyburn has asked for, and the government refuses to provide, any information that
2 contradicts the above facts. The government's response will be important in showing, should
3 this matter result in a conviction, a basis for a lenient sentence given these facts. Moreover, if
4 the above facts are indeed undisputed, a serious question as to what fact or factor prompted this
5 prosecution will be explored by the defense. Frankly, this simple possession case completely
6 fails to meet the federal prosecution "intake guidelines" and creates possible selective
7 prosecution or due process claims.

9 **4. Referral For Settlement Discussions**

10 The defense recommends that the case be assigned to a Magistrate Judge for possible
11 discussions regarding resolution.

13 **5. Mr. Clyburn's Recommendation Regarding Scheduling**

14 The defense requests that the Court set discovery motions for hearing on November 28, 2007.

17 Dated: 11/06/07

/s/
18 STEVEN F. GRUEL
Attorney for Donald Clyburn